

# A PERSUASIVE COLLOQUY

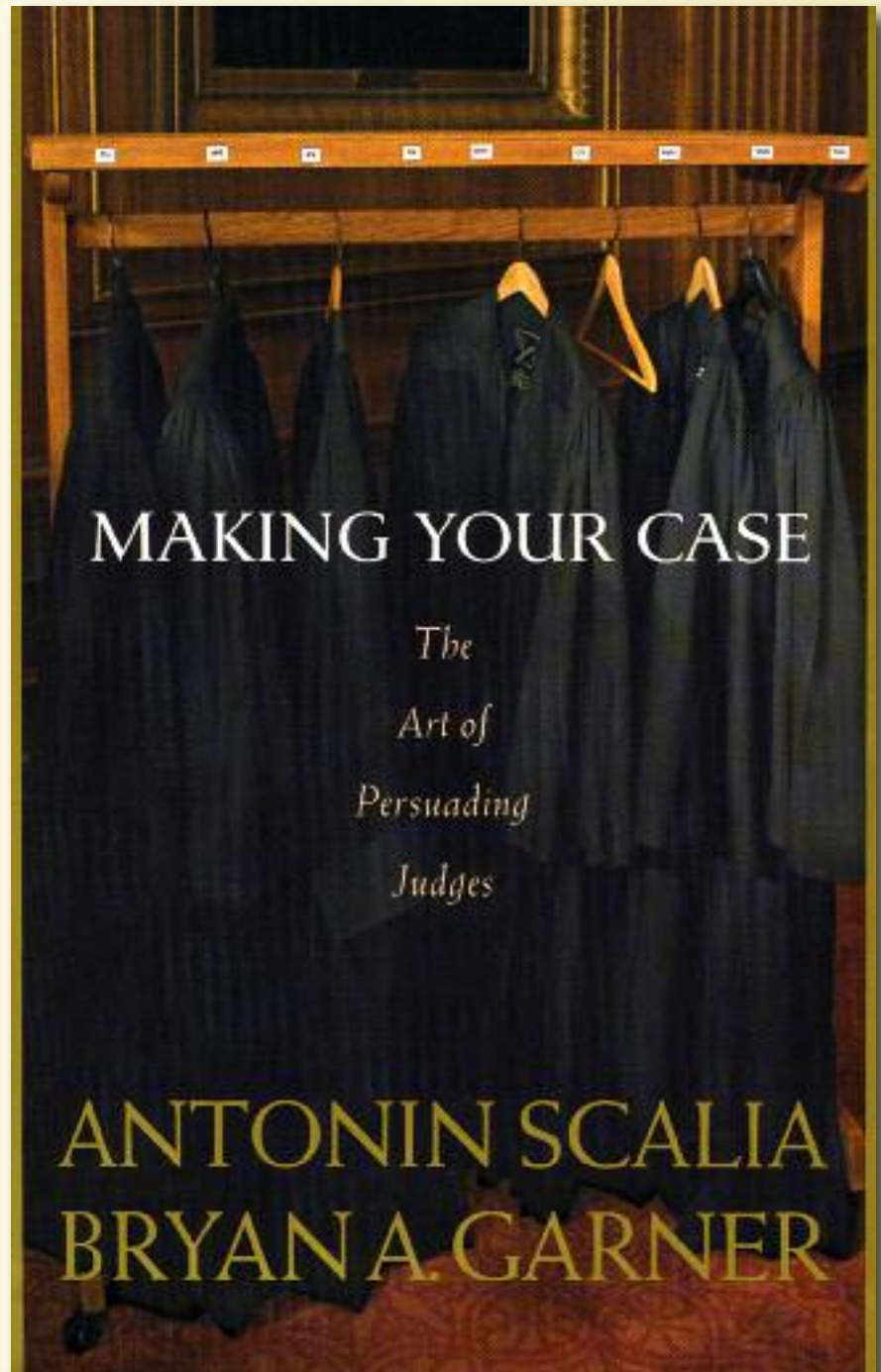
Once in a great while a book comes along that should be read by all lawyers. This is that kind of book.

Law schools should enlist their most distinguished faculty to teach courses in advocacy with this book as required reading. Law firms should issue copies to new associates and summer clerks and talk about its contents. Prosecutors and defense attorneys alike should be armed with the knowledge this book brings.

*Making Your Case* deserves the widest possible audience not simply because it is co-authored by an Associate Justice of the U.S. Supreme Court, Antonin Scalia. Regrettably, Justice Scalia's role in this collaborative effort may actually discourage some lawyers who routinely disagree with his opinions from cracking the book. Too bad. These lawyers would benefit from the canny and engaging insights of Justice Scalia and his writing partner, Bryan A. Garner, as much as any reader who cares about excellence in the practice of law.

To be sure, the book is worth reading for its wellspring of practical advice. Divided into four major sections, *Making Your Case* tackles the basics of legal advocacy: general principles of argumentation, legal reasoning, briefing and oral argument. In turn, each section is subdivided by useful headings—such as “Writing Style,” “Before You Speak” and “Handling Questions”—and the entire text is distilled into 115 maxims of advocacy that make this book readily accessible for many a case to come.

Along the way, the reader is greeted by a



**Making Your Case: The Art of Persuading Judges**  
by Antonin Scalia & Bryan A. Garner

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host of apt and wonderful quotations from eminent jurists, attorneys and philosophers. These ruminations appear in boxed sidebars and punctuate the authors' points in colorful and compelling ways. One may take pleasure in Justice Scalia's reliance on foreign voices, if not international law, to prove his points. After all, who would have imagined this Justice quoting the Right Honorable Lord Birkett, a Liberal member of Parliament between world wars, on the need to "cultivate the love of words"?

One beauty of this two-headed tutorial is the authors' ability to attribute any incriminating or offensive remarks to the other. Their book admittedly adopts a "conversational style," using language "more flippant or colloquial than one would normally encounter in legal commentary." In their Forward, Scalia and Garner hint that the tone of their ensuing words may resemble in their playfulness a bit of Mark Twain: "The reader who feels that some of these indulgences fall short of the formality and sobriety expected of a jurist should attribute all of them to the other author, and assume that they have been included under protest."

In fact, Scalia and Garner openly disagree about four things as they float together down the river of advocacy. For example, they debate the wisdom of eliminating all substantive footnotes from briefs, and the related notion of moving all citations from text to footnote. They joust over whether contractions have any place in legal writing. For some readers, these colloquies will excite the senses.

For others, the authors' shortcuts to successful advocacy will motivate them to master the maxims. The pages cry out with them: "Banish jargon, hackneyed expressions, and needless Latin." "Yield indefensible terrain—ostentatiously." "Don't overuse italics." The authors underscore the latter point by observing, "Constant italicizing gives your brief the tone of an adolescent diary, which is not what you should be striving for. (What should you be striving for? Brevity and clarity.)"

But if pointed advice and technical tips were all *Making Your Case* had to offer, one would be hard-pressed to commend the book so widely. Rather, there are two other attributes of the Scalia and Garner book that make it worth holding close at hand. They involve time and character.

A recent headline from page one of the *National Law Journal* announced, "Lawyers' writing skills still bad." Explaining the phenomenon, Garner is quoted in the article criticizing the influence of technology on attorney writing. Although technology has

improved some aspects of legal research and writing, all the electronic gizmos—such as text messaging, Blackberry messages and online news alerts—cause lawyers to lose concentration. As one legal writing instructor at Emory University School of Law observed, it's a matter of "distraction."

It's also a matter of time. Like most other professionals and business people today, lawyers are in a hurry, preoccupied with profitability. And the pressures of practice contribute to the sense that there's never enough time. To meet deadlines and satisfy clients in a challenging economy, all too many attorneys feel hard-pressed to devote the time to any particular brief or argument that excellent advocacy requires.

Scalia and Garner make the case for old-fashioned professionalism—the kind that depends on thorough preparation for success. While their book offers tips and perceived shortcuts, ultimately their advice depends on uncompromising dedication to a process. It is the process of helping judges reach fair and correct results, serving the client's best interests in a deeply competitive environment and achieving these ends as amicably and efficiently as possible. One simply cannot make one's case without at least knowing these principles of advocacy, a good many of which encourage assiduous preparation. And preparation takes time. Happily, Scalia and Garner liberate practitioners to devote the time it takes to produce works of outstanding quality.

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And what of character? The book begins and ends on this note. In their Introduction, the authors quote Isocrates and Aristotle on the preeminence of good character and reputation among the advocate's skill set. "Your objective in every argument," the authors explain, "is to show yourself worthy of trust and affection." They even offer some practical advice on how to achieve these abiding objectives.

The authors return to the subject of good character as they conclude this marvelous little book. "Argue not just for the day," they counsel, "but for reputation." They characterize "this profession of advocacy as a long-term continuum," not simply case upon case in isolation from the advocate's accumulation of character through the years.

This is a book for all lawyers—the new advocate who seeks guidance at the dawn of a professional journey, the experienced litigator who knows it all but would benefit from this bracing refresher, and everyone in between.

Read it and reap. 